



May 12, 2005

Letter of Appeal
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: CC Docket No. 02-6 -- "Administrator's Decision on Invoice Deadline Extension Request" dated 04/21/2005

The purpose of this letter is to submit an appeal to the decision rendered in the letter cited above. Specifically, the reason cited for denial of the initial request was "Current Deadline Extension guidelines and procedures do not allow approval for the reason submitted."

The following reference information is also provided as requested:

Form 471 Application Number: 299171
Funding Request Number (FRN): 780744
Service Provider Name: Removable Media Solutions, Inc.
Service Provider Identification Number (SPIN): 143017430
SLD Invoice Number: 527412
Amount of Invoice: \$466,301.25

Contact Person: Mary Lusi
Contact Information (email): mlusi@teamrmsi.com
Mailing address: RMSI, 3235 Sunrise Blvd., Rancho Cordova, CA 95742
Phone: (916) 858-3300
FAX: (916) 858-3313

As noted in previous communication, the Funding Commitment Decision Letter for this FRN was issued after the Funding Year had already concluded. This particular E-rate project (FRN 780744) was submitted by the Applicant in January 2002 as part of the Funding Year 2002 process. FRN approval was granted in Wave 30F, December, 2003, as evidenced by the Funding Commitment Decision Letter dated December 29, 2003. The issuance of FCDL after conclusion of the Funding Year immediately placed this FRN into an "exceptional" situation, outside the experience of either the Applicant or the Service Provider.

Due to the late receipt of this Funding Commitment Decision Letter and the scope of this project, the Applicant placed a call to the SLD Customer Service Bureau at 1-888-203-8100 on January 4, 2005 specifically asking which forms were required to be completed

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so that the project could be extended. Case Number 21-016075 was issued. The Applicant was advised to first complete the Form 486 - Receipt of Service Confirmation Form and send this immediately by certified mail, and that the only other form required was the Form 500 - Adjustment to Funding Commitments and Modification to Receipt of Service Confirmation Form. The Applicant sought further guidance at that time whether these steps were the ONLY steps necessary to extend the project. The response from the person at SLD was affirmative – no other actions would be required.

The Applicant proceeded to comply with the guidance provided by the SLD customer service person; he submitted the Form 486, and then submitted a Form 500 requesting extension of the Contract to June, 2005. This request was approved by SLD, as evidenced by the Form 500 Approval Letter dated February 02, 2004. Extension of the Contract period was further established by the Form 486 Notification Letter dated February 11, 2004, indicating a Contract Expiration Date of 06/30/2005.

Since the original request had been submitted in January 2002 and these approvals were not final until February 2004, new cabling and network infrastructure subcontractors had to make on-site visits to the school to examine the site, plan for remediation and installation actions, and develop detailed infrastructure installation plans. These on-site surveys had to work around the school schedule with classes in-progress throughout most of the Spring. Furthermore, during the following Summer Term of 2004, the elementary grade portions of the school continued to conduct classes. This resulted in significant delays for design and installation of the network infrastructure required to install, commission, test, and gain acceptance of the network hardware represented by the Invoice in question. Finally, there were shipment delays related to availability of equipment in the supply channel and subsequent back-orders. The Applicant has email records in September and October 2004 that were exchanged with the installer regarding equipment availability and suitable non-operational dates for actual installation of the equipment. Consequently, final commissioning, testing, and acceptance of the equipment occurred in December, 2004.

The Service Provider submitted the invoice in question and the Service Certification was provided by the Applicant. On March 23, 2005, we received notice via email from Mr. Ron Barbosa of SLD that he had to “fail” the invoice in question, citing the following reason: “The ship date of, 12/13/2004 was past the FRN ext of, 9/30/04.”

We submit the following grounds for consideration of our appeal:

- The FCDL issued for this FRN contains no reference to or notice of a specific Service Delivery Deadline.
- The advice, instruction, and counsel provided by the Customer Service representative of SLD to the Applicant in January 2004 were **incorrect**. Even when the Applicant specifically asked if any actions were required other than



submission of the 486 and 500, the answer was negative – no other actions would be required.

- There was no mention of a deadline for Receipt of Services.
- There was no mention of a need to request an extension to the deadline for Receipt of Services.
- There was no mention of a suspense date by which the Applicant would need to submit a request for extension to the deadline for Receipt of Services.

Based on our recent inquiries regarding denial of the invoice in question, we were referred to FCC 01-195, the Report and Order that provides for the rule change that established Service Delivery Deadlines for Non-Recurring Services. Unfortunately, that reference was not provided to the Applicant at the time of the inquiry in January 2004; consequently, in all his actions the Applicant reasonably relied on the counsel and advice provided to him by the SLD Customer Service Representative, which were clearly **incorrect/incomplete/or erroneous**.

Paragraph 19 of FCC 01-195 addresses contract extensions. Specifically, the wording appears to link contract extensions with other deadlines for Service Delivery. The implication, especially when taken together with the incorrect advice from SLD, would be that a contract extension granted as a result of a Form 500 request would have included an extension of the associated Service Delivery Deadline.

This Letter of Appeal is asking that FCC waive the FCC rules related to suspense dates for submission of Request for Extension to Service Delivery Deadline (Para 15, FCC 01-195), since the Applicant received incorrect/incomplete/or erroneous guidance from SLD, and that FCC instruct SLD, as part of that waiver, to accept the Service Delivery Date of 12/13/2004 as valid. We submit that there was sufficient reason for delay of installation, testing, commissioning, and acceptance of all Non-Recurring Services beyond the normally established September 30, 2004 deadline, as provided in paragraph 16, FCC 01-195. Furthermore, we submit that Applicant would have submitted an extension request as provided in paragraph 15, had he been aware that 1) such a delivery deadline existed, 2) that there was a requirement for requesting and extension to such delivery deadline, and 3) that the unknown delivery deadline also constituted a deadline for submitting the extension request.

Finally, in paragraph 18 of FCC 01-195, the Commission discusses the reasons for instituting the Rule Changes contained in the Report and Order. Specifically, it states: "We conclude that a rule change will ensure schools and libraries are not penalized when they are not responsible for missing the installation deadline." In the same regard, we submit that favorable consideration of this request for waiver of rules by FCC is equally justifiable, i.e., to avoid penalizing a Small Business (the Service Provider) due to an



administrative error (failure by the Applicant to request extension to the Service Delivery Deadline) that was primarily attributable to **incorrect/incomplete/or erroneous** procedural guidance provided by SLD.

Sincerely,

Mary Lusi
President and CEO